

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
LISA NOVELLA LEDGER, ) CASE NO. 04-61481 JPK  
 ) Chapter 13  
Debtor. )

ORDER REGARDING MOTION TO SELL REAL ESTATE  
WITH SHORTENED NOTICE OF MOTION

On July 7, 2006, the debtor, by counsel, filed a Motion to Sell Real Estate With Shortened Notice of Motion. Paragraph 6 of the motion requests shortening of the notice period provided by N.D.Ind.L.B.R. B-2002-2(a)(16) to fifteen days because the purchaser "is requesting an immediate closing and the debtor is paying off her chapter 13 plan". On July 7, 2006, the debtor filed a Certificate of Service with respect to a "Notice of Motion to Sell" provided to creditors and parties-in-interest in this case. That notice presupposes – prior to the Court's entry of an order providing for the shortening of notice – that the applicable notice period would be shortened to fifteen days.

First, a motion to sell property and a motion requesting the shortening of the notice period are not "requests for alternative relief" within the meaning of N.D.Ind.L.B.R. B-9013-1. Thus, in order to obtain action by the Court with respect to the subject matter of the motion filed on July 7, 2006, a separate motion requesting shortening of the notice period and a separate motion requesting authority to sell the subject real estate must be filed, together with proposed forms of order with respect to both motions.<sup>1</sup>

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<sup>1</sup> The Court notes that the form of order tendered on July 7, 2006, is deficient. First, the order provides that the debtor may "sell or abandon her interest (in the subject property)". The concept of sale or use of property of a bankruptcy estate pursuant to 11 U.S.C. § 363 and the concept of abandonment of property of the estate under 11 U.S.C. § 554 are nearly diametrically opposed, and the Court will not enter an order which authorizes the debtor to select between these two forms of action with respect to the subject real estate. Perhaps more importantly, the tendered form of order provides that funds from the sale will be applied to the outstanding mortgage and outstanding property taxes only, a provision which leaves the debtor without authority to apply any of the proceeds of sale to ordinary costs and expenses of sale incurred by a seller of residential real estate.

Now we come to the most critical aspect of the deficiencies in the record. As is customary with the debtor's counsel, the form of notice utilized under N.D.Ind.L.B.R. B-2002-2 does not conform to Forms 3a (LBF-3a) and 3b (LBF-3b) as provided in Rule B-2002-2(c). Those forms provide for a specific designation of the "date" from which the notice period is calculated. Attorney Dabertin's form states a date underneath his signature line, and a date underneath his signature line on the certificate of service, and the Court has condoned this practice for quite some time on the theory that the only date in the document appears in those locations and that creditors can ascertain the date upon which notice is given from those dates. The Court is condoning this practice no longer, given the problem now arising with respect to the notice used in this case. It appears that originally the dates underneath Attorney Dabertin's two signature lines were typed in to be "7/2/2006", and that then the dates were changed by handwriting. The changed date appears to be "7/5/2006", but the date in the certificate of service itself appears to the Court to be "7/8/2006". The Court determines that the form of notice heretofore utilized by Attorney Dabertin is not "substantially similar" to either Form LBF-3a or Form LBF-3b with respect to the designation of the date by which objections to the motion are to be filed, in reference to a clearly stated date of service of the notice. The Court notes that even if it were to allow Attorney Dabertin to slide on this form yet one more time, there is no clear statement in the notice filed on July 7, 2006 of the actual date upon which the notice period begins to run.

Finally, the Court finds that the reason given for shortening the notice period to fifteen days does not state a sufficient ground for shortening the notice period.

IT IS ORDERED that the Motion to Sell Real Estate With Shortened Notice of Motion is denied, due to non-compliance with N.D.Ind.L.B.R. B-9013-1(a) and (c).

IT IS FURTHER ORDERED that the request for shortening of notice stated in the foregoing motion is denied, due to insufficiency of grounds stated in that motion.

IT IS FURTHER ORDERED that the Court will not consider a motion to sell the real estate unless a separate motion for that relief – together with a form of order which properly provides for the sale – is filed with the Court, and evidence of provision of notice pursuant to N.D.Ind.L.B.R. B-2002-2(a)(16) **in conformity with this order** is filed.

Dated at Hammond, Indiana on July 12, 2006.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee